

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 45-004-12-1-5-00272-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-27-207-009.000-004
Assessment Year: 2012

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. Nowacki contested the 2012 assessment of his property located at 820-22 E. 39th Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the property at \$1,800 (land \$900 and improvements \$900).
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On February 18, 2020, Ellen Yuhan, our designated Administrative Law Judge (“ALJ”), held a hearing on Nowacki’s petition. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by his Hearing Officers, Robert Metz and Joseph E. James. They were all sworn as witnesses.

RECORD

4. The official record for this matter contains the following:
 - a. Petitioner Exhibit A: Notice of Hearing; two property record cards (“PRCs”) (2007-2012, 2015-2019); GIS map
 - Petitioner Exhibit B: Request for Public Record
 - Petitioner Exhibit C: Cover letter for Kovachevich appraisal for 1109 Oklahoma Street; land comparison approach; PRC (2015-2019); and tax bill
 - Petitioner Exhibit D: Cover letter for Kovachevich appraisal for 739-29 W. 35th Avenue; land comparison approach; and PRC (2015-2019)
 - Petitioner Exhibit E: Cover letter for Kovachevich appraisal for 2517-

Petitioner Exhibit F: 2525 Washington Street; land comparison approach; and PRCs (2015-2019) for each parcel Enlargement of page 17 (land comparison approach comparable sales list from appraisals)

Petitioner Exhibits G-GG: PRCs for the properties listed in the land comparison approach^{1,2,3}

- b. The record for the matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in these appeals; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

BURDEN OF PROOF

5. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances--where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I. C. § 6-1.1-15-17.2 (b) and (d).
6. Here, the value of the property decreased from 2011 to 2012. Nowacki therefore bears the burden of proof.

OBJECTIONS

7. The Assessor objected to Petitioner Exhibits C, D and E on grounds of admissibility. He also objected to B through GG on relevance. He argued the appraisals are not for the subject property, and Nowacki is not an intended user or authorized to use the appraisals. The Assessor also cites to a Uniform Standards of Professional Appraisal Practice ("USPAP") Advisory Opinion, which states that while a person may have a copy of an appraisal, that person is not an intended user unless he was specifically identified by the appraiser.⁴ Nowacki received the appraisals in response to a Freedom of Information request. The ALJ took the objections under advisement. Because the exhibits provide information about other Lake County properties, they have at least minimal relevance to this proceeding. Whether Nowacki is listed as an intended or authorized user for these appraisals is not sufficient reason to exclude them. We therefore overrule the objections and admit Exhibits B-GG. We note that these exhibits do not affect the outcome.

¹ Exhibit F lists a PRC for 4522 Cedar Avenue in Hammond, but no PRC for that address is found in the exhibits.

² Nowacki provided only one set of Exhibits B-GG for the first hearing held on February 18th. 52 IAC 2-7-1 provides that evidence must be submitted into the record of proceeding for it to be considered by the Board. In future hearings, the parties must prepare and submit a copy of all evidence they wish to be considered into the record at each hearing.

³ The Assessor submitted no exhibits.

⁴ The ALJ adopted and incorporated the Assessor's objections and arguments made earlier this date in 45-004-13-1-5-00265-16.

SUMMARY OF CONTENTIONS

8. Nowacki's case:
 - a. The Assessor valued this property at \$9,000 in 2007, which is 10 times its current assessed value. These errors are pervasive and may indicate some type of conspiracy by the Assessor's Office. This is a tortuous process which drags the taxpayer through so many steps. This process has contributed to the decline of the city and made it impossible for people to buy and hold property. Nowacki accepts the land only assessed value of \$900 recommended by the Assessor. *Nowacki testimony.*
9. The Assessor's case:
 - a. The property is vacant, commercial land. The Assessor recommends that the 2012 assessment be reduced to a land only value of \$900. *James testimony.*

ANALYSIS

10. Because Nowacki accepted the Assessor's recommended land only value of \$900 for 2012 there is no need for discussion or analysis.

FINAL DETERMINATION

In accordance with the parties' agreement, we order the 2012 assessment reduced to a land only value of \$900.

ISSUED: May 5, 2020

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.